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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: CCO - 177598

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on October 25, 2016, under Wis. Admin. Code § HA 3.03, to review a decision by the Outagamie County Department of Human Services regarding Child Care (CC), a hearing was held on December 7, 2016, by telephone.

The issue for determination is whether the Outagamie County Department of Human Services (the agency) correctly determined the Petitioner is liable for an overpayment of \$4,655.17 in childcare benefits for the period of March 6, 2016 to August 6, 2016.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

Respondent:

Department of Children and Families  
201 East Washington Avenue, Room G200  
Madison, WI 53703

By: [REDACTED], Child Care Subsidy Specialist  
Outagamie County Department of Human Services  
401 S. Elm Street  
Appleton, WI 54911-5985

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Outagamie County.

2. On October 3, 2016, the agency sent the Petitioner a notice, indicating that due to an agency error, she had been overpaid childcare benefits, in the amount of \$4,655.17 for the period of March 6, 2016 to August 6, 2016. (Exhibit 2)
3. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on October 25, 2016. (Exhibit 1)

### **DISCUSSION**

The Petitioner did not dispute the fact that she used the childcare in question. She did not dispute the agency's calculation her income, nor the calculation of the overpayment itself. However, the Petitioner argued that she should not have to repay the benefits, because 1) She did not ask for the benefits; they were offered to her by an income maintenance worker; 2) She told the income maintenance worker that she received a substantial amount in child support income and that she did not think she would qualify for benefits, but the worker insisted, incorrectly, that Petitioner's child support income did not need to be counted; and 3) it is undisputed that the worker processed an application for childcare benefits, for the Petitioner, incorrectly excluding the child support income<sup>1</sup>, which caused the overpayment.

The county agency is legally required to seek recovery of all overpayments of child care benefits. An overpayment occurs when a recipient is not eligible to receive child care benefits or receives more benefits than he or she is entitled to receive. Wis. Stat. § 49.195(3) provides that the department shall determine whether an overpayment has occurred, shall notify the recipient, and shall give the recipient an opportunity for a review and hearing. Wis. Stat. § 49.195(3) See also *Wisconsin Shares Child Care Assistance Manual (Child Care Manual)*, §3.5.2, formerly §2.1.5.1

"All overpayments made to a client, whether due to client error, agency error or fraud, **must** be formally established to be repaid by the client." *Id.* Thus, it does not matter whose error caused the overpayment, it must be repaid by the benefit recipient.

The Petitioner argues that this simply is not fair. However, administrative law judges do not possess equitable authority, and as such, cannot base decisions upon what a party thinks is fair or unfair. *See, e.g., Wisconsin Socialist Workers 1976 Campaign Committee v. McCann*, 433 F. Supp. 540, 545 (E.D. Wis. 1977). The Division of Hearings and Appeals must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. Policy cannot be ignored or reversed where not in conflict with the law. Applied here, the Division of Hearings and Appeals must follow the regulatory scheme just outlined and that regulation requires the petitioner to pay back the benefits that she was not entitled to receive.

### **CONCLUSIONS OF LAW**

The agency correctly determined the Petitioner is liable for an overpayment of \$4,655.17 in childcare benefits for the period of March 6, 2016 to August 6, 2016.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

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<sup>1</sup> The Wisconsin Shares Child Care Subsidy Manual (CCM) §1.5.2. indicates that child support payments greater than \$1,250.00 per month are counted as income. Between March 2016 and August 2016, the Petitioner received \$2,039.20 per month in child support. (Exhibit 5) As such, it should have been counted as income when determining the Petitioner's eligibility for child care benefits.

## REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

## APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 30th day of January, 2017

\s \_\_\_\_\_  
Mayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on January 30, 2017.

Outagamie County Department of Human Services  
Public Assistance Collection Unit  
Child Care Fraud